IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (PIL) NO.131 OF 2004

Sanidha Gajanan Vedpathak & Ors. ..Petitioners.

Vs.

Union of India & Ors. .. Respondents.

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Mr. Gangal for the petitioners.
Mr. M.V. Limaye for the respondents.

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CORAM : DALVEER BHANDARI, C.J.&
DR.D.Y.CHANDRACHUD, J.

22nd December, 2004.

P.C. :

1. In this petition which purports to be filed in the public interest, the First and Second Petitioners who are advocates have joined together in prosecuting the claim of the Third Petitioner in respect of the pensionary dues of the Third Petitioner. The Third Petitioner was dismissed from the service of the Ordnance Factory at Bhusaval on 1st March 1983 on a charge of having attempted to commit theft of government property. In an appeal preferred against the order of dismissal, the appellate authority on 8th April,

1985 substituted the order of dismissal with an order of compulsory retirement as and by way of a penalty. At this stage, it may be necessary to note from the affidavit in reply which has been filed in these proceedings that the service record of the Third Petitioner was not unblemished. At various stages of his service, the Third Petitioner had been fined due to unauthorized absence and for disobedience of orders. His increments had been stopped on 19th April, 1977 for a period of one year without cumulative effect for carelessness and neglect of duty. On 28th April, 1978 an order was passed stopping the increments of the Third Petitioner for two years though without cumulative effect for gross misconduct involving attempted theft of government property. On 26th July, 1979, the Third Petitioner was reverted from the post of truck driver to Labour "B" grade. Finally, as already noted earlier, he was dismissed from service with effect from 1st March, 1983 on a charge of attempted theft of government property. That order was modified in appeal to an order of compulsory retirement.

2. In the year 1990, the Petitioner moved an application before

the Central Administrative Tribunal praying for a declaration that he had completed 20 years' of service and that he was entitled to pensionary benefits. The Tribunal dismissed the application on 6th April, 1990 holding that it was barred by limitation and that the delay had not been satisfactorily explained. A review application was dismissed on 28th September, 1990. A Special Leave Petition was filed before the Supreme Court which was dismissed on 30th July, 1996 and a review petition was dismissed by the Supreme Court on 5th November, 1996. The Third Petitioner once again filed an application before the Central Administrative Tribunal which came to be dismissed on 23rd April, 1998. The Tribunal held that the application was barred by the principles of res judicata.

3. In this background, we are of the view that the controversy which attained finality in the earlier round of proceedings cannot be converted into a public interest petition, by two advocates viz. the First and the Second Petitioners seeking to join in the proceedings with the Third Petitioner. In **Ashok Kumar Pandey v. State of West Bengal** (AIR 2004 SC 280), the Supreme Court has clearly

held that a public interest petition is not maintainable in service matters. Hon'ble Mr. Justice Arijit Pasayat speaking for a Bench of two Learned Judges held thus :

> "Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in Dr. Duryodhan Sahu v. Jitendra Kumar Mishra and others (AIR 1999 SC 114), this Court held that in service matter PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision."

The Petition must be rejected on this ground alone.

4. Even on merits, we are of the view that the petition is clearly lacking in bonafides and must be dismissed. In paragraphs 1(i), 1 (iv)(a) and 12 of the petition and in grounds (d) and (f), the Petitioners have proceeded on the foundation that the Third Petitioner had completed 20 years of service and that accordingly, he was entitled to compulsory retirement pension under Rule 40 of

the Central Civil Services (Pension) Rules, 1972. In the affidavit in reply that has been filed on behalf of the Respondents, it has been stated that the Third Petitioner never completed 20 years of service but, that his qualifying service was 19 years 7 months and 26 days. Hence, it was urged that the Third Petitioner was in any event not qualified to receive pensionary benefits under Rule 2(d) of the Central Civil Services (Pension) Rules, 1972. After the penalty imposed on the Third Petitioner was modified in appeal to compulsory retirement, the pension papers were submitted to the competent authority viz. C. D. A. (Pension) Allahabd for sanction, but sanction was not granted as the Third Petitioner had not completed 20 years' of qualifying service. In this view of the matter, Rule 40 of the Central Civil Services (Pension) Rules, 1972 does not stand attracted.

5. Faced with this difficulty, in the rejoinder which has been filed by the Petitioners, a new case is sought to be made out viz. that the Third Petitioner completed 10 years of qualifying service and must be held eligible to the grant of pensionary benefits under

Rule 49 of the Central Civil Services (Pension) Rules, 1972. We find absolutely no merit in that submission. Rule 49(2) (b) deals with a case of a government servant " retiring in accordance with the provisions of these rules before completing qualifying service of 33 years, but after completing qualifying service of 10 years". The Third Petitioner is not entitled to the benefit of Rule 49(2)(b) because this is not a case where a government servant had retired in accordance with the provisions of the 1972 rules. The present is a case where the Third Petitioner was subjected to the penalty of compulsory retirement on a charge of misconduct. The Third Petitioner, it must be noted, did not retire from service upon attaining the age of superannuation. We, therefore do not find any merit in the petition. The petition is accordingly dismissed.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD,

J.